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Massachusetts Wind Energy Siting Reform

WIND ENERGY SITING REFORM ACT OF 2009

Background

In 2008, the legislature enacted the Green Communities Act (GCA). Section 89 of that Act creates an advisory energy facilities siting commission and directs that commission to determine “whether current laws and regulations do not adequately facilitate the siting of renewable energy and alternative energy facilities” and whether such laws “make it more difficult to site renewable energy facilities than fossil-fueled energy facilities.” The Act also tasks the commission to “make recommendations for changes to such laws and regulations.”

In the fall of 2008, the Executive Office of Energy and Environmental Affairs (EEA) empaneled the siting commission to investigate these and other issues. Because of widespread public interest in renewable energy facility siting, EEA invited active participation by stakeholders not on the commission. EEA held approximately fifteen meetings, and solicited input from a wide range of stakeholders, including wind energy developers, utility companies, municipalities, land use permitting attorneys and consultants, environmental groups, and others. In addition, EEA retained TRC, a national consulting firm with expertise in wind energy facility development, to conduct a study of siting in Massachusetts. TRC submitted its [report PDF](#) to EEA in April 2009.

Anticipating the need for renewable energy siting reform legislation, Senator Morrissey and Representative Dempsey filed “placeholder” legislation in January, 2009 (S. 1504 and H. 3065).

The Problem that Needs to Be Solved

The Commonwealth is almost entirely dependent on out-of-region fossil fuel sources for its energy needs – electricity, heating, cooling, transportation, etc. That dependence reduces our energy security and makes us vulnerable to fluctuating markets, price spikes and international instability. Our use of fossil fuels also contributes to local and regional air pollution as well as to climate change. Along with vastly increasing energy efficiency (which the GCA also accomplishes), increasing local sources of renewable energy is critical to reducing our dependence on fossil fuels, increasing our energy security, saving on energy costs, reducing environmental impacts, and seizing green economic opportunities. Indeed, Governor Patrick recently announced the goal of having 2000 MW of wind energy in Massachusetts or adjacent federal waters by 2020. We currently have approximately 7 MW.

The TRC report makes clear that the Commonwealth’s current siting laws and regulations are part of the problem. Our laws “do not adequately facilitate the siting of renewable energy and alternative energy facilities” and instead “make it more difficult to site renewable energy facilities than fossil-fueled energy facilities.”

Current laws and regulations fail in four important respects:

- There are no statewide siting standards, so wind energy developers do not know what criteria they need to meet in order to develop a wind facility;
- At both the state and local level, there are a large number of permits and approvals that are required and obtaining all of these approvals takes significant time. Current laws allow for judicial appeals of virtually all permits, and these appeals take years to resolve even when they lack merit.
- For siting purposes, current law discriminates in favor of fossil-fueled facilities. This is because current law grants electric generating projects that are larger than 100 MW a “one-stop” permitting

procedure whereby the state Energy Facilities Siting Board issues one permit in lieu of all other state and local permits, with one appeal directly to the state's highest court. Wind projects on land are typically much smaller than 100 MW, and therefore cannot take advantage of this procedure.

The TRC Report highlights a number of examples of wind projects that have been delayed due to these flaws:

- Hoosac Wind, a 30 MW wind farm in the Berkshires that is supported by the two host communities, has been in permitting since 2001, and has been delayed by successive appeals of a wetland permit for an access road. The wetland permit was issued in 2004 and is still on appeal to the Massachusetts Appeals Court, even though the local conservation commission, the regional staff and commissioner of the Department of Environmental Protection, and the Berkshire Superior Court have all determined that the project met applicable wetland standards.
- Princeton Wind, a 3 MW municipal wind project, was delayed for 3½ years because of appeals of zoning permits. The appeals caused the private developer that was partnering with the town to withdraw, requiring the town to assume the full cost of the project.
- Berkshire Wind, a 15 MW project in the Berkshires, has been in the development process for over 10 years due in part to efforts by anti-wind opponents to enact restrictive zoning bylaws, and by lawsuits from abutters.

The Legislative Solution


The Wind Energy Siting Reform Act of 2009 directly addresses all of these problems:

- It mandates that the Siting Board establish clear and predictable siting standards for wind facilities; the standards must be as protective as existing state laws.
- For wind projects over 2 MW, it provides for one-stop permitting at the local level, with any appeal to the siting board, not court. The Siting Board also would issue a one-stop permit for all state permits that are needed.
- There would be one appeal of the Siting Board's decision to the state's highest court.
- These procedures would decrease the time of permitting from 8 years and counting (Hoosac); 5 years (Princeton) and 10 years (Berkshire Wind), to approximately nine to eighteen months, with an additional year of there is a judicial appeal.
- The bill also places a municipal representative and the commissioner of the Department of Fish and Game on the board, and provides a number of financial benefits to municipalities that approve wind energy facilities.

References

- [Wind Siting Reform Report](#) PDF
- [Wind Energy Siting](#) PDF
- [Summary of Siting Bill](#) PDF

This information is provided by the [Department of Energy Resources](#),

 *Creating a Greener Energy Future for the Commonwealth.*